

**Chapter 18.790**  
**VARIANCES AND ADJUSTMENTS**

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**18.790.010 Purpose**

This chapter establishes standards and criteria for granting variances and adjustments. Variances and adjustments provide relief from specific requirements of this title that have the unintended effect of preventing reasonable development or imposing undue hardship. Variances are intended to provide some flexibility while ensuring that the intent of each development standard is met. (Ord. 17-22 §2)

**18.790.020 Variances**

A. Applicability of provisions.

1. The variance standards are intended to apply to individual platted and recorded lots only.
2. An applicant who is proposing to vary a standard for lots yet to be created through a subdivision process may not utilize the variance procedure unless otherwise specified in Chapter 18.830, Subdivisions.

B. Approval process. Variances shall be processed through a Type II procedure, as provided in Section 18.710.060, using the criteria in Subsection 18.790.020.C.

C. Approval criteria. The approval authority shall approve or approve with conditions a variance application when all of the following are met:

1. The proposed variance will not be materially detrimental to the purposes of this title, to any other applicable policies and standards, and to other properties in the same base zone or vicinity;
2. There are special circumstances that exist, which are peculiar to the lot size or shape, topography or other circumstances over which the applicant has no control, and that are not applicable to other properties in the same base zone;
3. The use proposed will be the same as permitted under this title and city standards will be maintained to the greatest extent that is reasonably possible while permitting reasonable economic use of the land;
4. Existing physical and natural systems, such as but not limited to traffic, drainage, dramatic land forms or parks will not be adversely affected any more than would occur if the development were developed as specified in the title; and
5. The hardship is not self-imposed and the variance requested is the minimum variance that would alleviate the hardship. (Ord. 17-22 §2)

## **18.790.030      Adjustments**

### **A. Development adjustments.**

1. The following development adjustments shall be processed through a Type I procedure, as provided in Section 18.710.050, using criteria in Paragraph 18.790.030.A.2:
  - a. Front yard setbacks. Up to a 25 percent reduction of the dimensional standards for the front yard setback required in the applicable base zone. Setback of garages may not be reduced by this provision.
  - b. Interior setbacks. Up to a 20 percent reduction of the dimensional standards for the side and rear yard setbacks required in the applicable base zone.
  - c. Lot coverage. Up to 5 percent increase of the maximum lot coverage required in the applicable base zone.
2. The approval authority shall approve or approve with conditions a development adjustment when all of the following are met:
  - a. A demonstration that the adjustment requested is the least required to achieve the desired effect;
  - b. The adjustment will result in the preservation of trees, if trees are present in the development area;
  - c. The adjustment will not impede adequate emergency access to the site; and
  - d. There is not a reasonable alternative to the adjustment that achieves the desired effect.

### **B. Special adjustments. Special adjustments are deviations from development standards. The approval process and approval criteria for special adjustments are provided below.**

1. Adjustments to development standards within Chapter 18.830, Subdivisions. The approval authority shall consider the application for adjustment at the same time as the preliminary plat. The approval authority shall approve or approve with conditions an adjustment application when all of the following are met:
  - a. There are special circumstances or conditions affecting the property that are unusual and peculiar to the land as compared to other lands similarly situated;
  - b. The adjustment is necessary for the proper design or function of the subdivision;
  - c. The granting of the adjustment will not be detrimental to the public health, safety, and welfare, or injurious to the rights of other owners of property; and
  - d. The adjustment is necessary for the preservation and enjoyment of a substantial property right because of an extraordinary hardship that would result from strict compliance with the regulations of this title.

2. Adjustment to minimum residential density requirements in residential zones. An adjustment to the minimum residential density requirements in Section 18.110.040, shall be processed through a Type I procedure, as provided in Section 18.710.050. An adjustment may be approved as follows:
  - a. For development on an infill site as follows:
    - i. In the R-25 zone, sites of 0.75 acres or smaller.
    - ii. In the R-40 zone, sites of 0.75 acres or smaller.
  - b. For development on sites larger than 0.75 acres, the applicant shall demonstrate on the site plan that the site is so constrained that the proportional share of the required minimum density cannot be provided and still meet all of the development standards in the applicable base zone.
  - c. To be granted an adjustment in either subparagraph a or b of this paragraph 2, the applicant shall demonstrate that the maximum number of residential units are being provided while complying with all applicable development standards in the applicable base zone. There is nothing in this section that precludes an applicant for applying for a variance to these standards, as provided in Section 18.790.020.
3. For adjustments to density requirements in Washington Square Regional Center, the standards of Subsection 18.670.040.E apply.
4. Adjustment to Chapter 18.920, Access, Egress and Circulation.
  - a. In all base zones where access and egress drives cannot be readily designed to conform to standards within a particular parcel, access with an adjoining property shall be considered. If access in conjunction with another parcel cannot reasonably be achieved, the approval authority may grant an adjustment to the requirements of Chapter 18.920, Access, Egress and Circulation, through a Type II procedure, as provided in Section 18.710.060, using criteria in Subparagraph 18.790.030.B.4.b.
  - b. The approval authority may approve or approve with conditions an adjustment application to the requirements of Chapter 18.920, Access, Egress and Circulation when all of the following are met:
    - i. It is not possible to share access;
    - ii. There are no other alternative access points on the street in question or from another street;
    - iii. The access separation requirements cannot be met;
    - iv. The request is the minimum adjustment required to provide adequate access;
    - v. The approved access or access approved with conditions will result in a safe access; and
    - vi. The requirements of Chapter 18.930, Vision Clearance Areas, will be met.
5. Adjustments to Chapter 18.310, Off-Street Parking and Loading.

- a. Reduction from minimum parking requirements shall be processed through a Type II procedure, as provided in Section 18.710.060. The approval authority shall approve or approve with conditions up to a 20 percent reduction in the total minimum vehicle parking spaces required in Table 18.310.2, when an applicant can demonstrate in a parking study prepared by a traffic consultant or in parking data from comparable sites that:
  - i. Use of transit, demand management programs, or special characteristics of the customer, client employee, or resident population will reduce expected vehicle use and parking space demand for this development, as compared to standards Institute of Transportation Engineers (ITE) vehicle trip generation rates and minimum city parking requirements; and
  - ii. A reduction in parking will not have an adverse impact on adjacent uses.
- b. Reductions in minimum parking requirements in new developments for transit improvements shall be processed through a Type II procedure, as provided in Section 18.710.060. The approval authority shall approve or approve with conditions up to a 20 percent reduction in the total minimum vehicle parking spaces required in Table 18.310.2, when the applicant:
  - i. Incorporates transit-related facilities such as bus stops and pull-outs, bus shelters, transit-oriented developments and other transit-related development; and
  - ii. Documents operational characteristics indicating the number of transit users, or number of non-auto users for a particular facility.
- c. Reductions in minimum parking requirements in existing developments for transit improvements shall be processed through a Type II procedure, as provided in Section 18.710.060. The approval authority shall approve or approve with conditions up to a 10 percent reduction in the total minimum vehicle parking spaces required in Table 18.310.2, at a conversion ratio of 1 space per 100 square feet of transit facility, when the applicant:
  - i. Incorporates transit-related facilities such as bus stops and pull-outs, bus shelters, transit-oriented developments and other transit-related development; and
  - ii. Meets the following requirements:
    - (A) A transit facility shall be located adjacent to a street with transit service. The facility should be located between the building and front property line, within 20 feet of an existing transit stop, or the facility may include a new transit stop if approved by TriMet.
    - (B) A transit facility shall include a covered waiting or sitting area.
- d. Increases in the maximum parking requirements shall be processed through a Type II procedure, as provided in Section 18.710.060. The approval authority shall approve or approve with conditions off-street parking in excess of the maximum allowed parking spaces in Table 18.310.2, when the applicant can demonstrate that all of the following are met:
  - i. The individual characteristics of the use at that location requires more parking than is generally required for a use of this type and intensity;

- ii. The need for additional parking cannot be reasonably met through provision of on-street parking or shared parking with adjacent or nearby uses; and
    - iii. The site plan shall indicate how the additional parking can be redeveloped to more intensive transit-supportive use in the future.
  - e. Reduction in required bicycle parking shall be processed through a Type II procedure, as provided in Section 18.710.060. The approval authority shall approve or approve with conditions a reduction of required bicycle parking as required by Table 18.310.2, if the applicant can demonstrate that the proposed use by its nature would be reasonably anticipated to generate a lesser need for bicycle parking.
  - f. The use of an alternative parking garage layout parking shall be processed through a Type II procedure, as provided in Section 18.710.060. The approval authority shall approve or approve with conditions an alternative design of parking garage that differs from the dimensional standards in Figure 18.310.2 when it can be demonstrated that:
    - i. The proposed structure meets design guidelines of the Urban Land Institute's (ULI) Dimensions of Parking, current edition; or
    - ii. A similar structure functions efficiently using proposed modified layout, circulation and dimensions.
  - g. Reduction in length of stacking lanes shall be processed through a Type I procedure, as provided in Section 18.710.050. The approval authority shall approve or approve with conditions a reduction in the length of vehicle stacking lane required by Paragraph 18.310.040.D.1 if such a reduction is deemed appropriate after analysis of the size and location of the development, limited services available and other pertinent factors.
6. Adjustments to Chapter 18.435, Signs.
- a. An adjustment to the sign requirements shall be processed through a Type II procedure, as provided in Section 18.710.060. The approval authority shall approve or approve with conditions an adjustment to the sign requirements when at least one of the following are met:
    - i. The proposed adjustment to the height limits is necessary to make the sign visible from the street because of the topography of the site, or a conforming building or sign on an adjacent property would limit the view of a sign erected on the site in compliance with Chapter 18.435, Signs;
    - ii. A second freestanding sign is necessary to adequately identify a second entrance to a business or premises that is oriented toward a different street frontage;
    - iii. Up to an additional 25 percent of sign area or height may be permitted when it is determined that the increase will not deter from the purpose of Chapter 18.435, Signs. This increase should be judged according to specific needs and circumstances that necessitate additional area to make the sign sufficiently legible. The increase shall not conflict with any other non-dimensional standards or restrictions of this chapter;
    - iv. The proposed sign is consistent with the criteria in 18.435.130.G;

- v. The proposed exception for a second freestanding sign on an interior lot that is zoned commercial or industrial is appropriate because all of the following apply:
    - (A) The combined height of both signs shall not exceed 150 percent of the sign height normally allowed for 1 freestanding sign in the same base zone; however, neither shall exceed the height normally allowed in the same base zone;
    - (B) Neither sign will pose a vision clearance problem or will project into the public right-of-way; and
    - (C) Total combined sign area for both signs shall not exceed 150 percent of what is normally allowed for 1 freestanding sign in the same base zone; however, neither shall exceed the height normally allowed in the same base zone.
  - b. In addition to the criteria in subparagraph a of this paragraph 6, the approval authority shall review all of the existing or proposed signage for the development and its relationship to the intent and purpose of Chapter 18.435, Signs. As a condition of approval of the adjustment, the approval authority may require:
    - i. Removal or alteration of nonconforming signs to achieve compliance with the standards in Chapter 18.435, Signs;
    - ii. Removal or alteration of conforming signs to establish a consistent sign design throughout the development; and
    - iii. Application for sign permits for signs erected without permits or removal of such illegal signs.
7. Adjustments to Chapter 18.450, Wireless Communication Facilities.
- a. An adjustment to the wireless communication facilities setback requirements shall be processed through a Type II procedure, as provided in Section 18.710.060. The approval authority shall approve or approve with conditions an adjustment to the requirement that a wireless communication tower be set back at least the height of the tower from any off-site residence when all of the following are met:
    - i. The proposed location of the tower complies with the setback requirements for the applicable base zone in which the property is located;
    - ii. A structural engineer certifies that the tower is designed to collapse within itself;
    - iii. Because of topography, vegetation, building orientation, or other factor, a site closer to an off-site residence will equally or better reduce the visual impacts associated with the tower upon the off-site residence.
  - b. An adjustment to the wireless communication facilities spacing requirements shall be processed through a Type I procedure, as provided in Section 18.710.050. The approval authority shall approve or approve with conditions an adjustment to the requirement that a wireless communication tower be located 2,000 feet from another tower in a residential zone or 500 feet from another tower in a nonresidential zone when the following are met:

- i. The applicant has fully complied with the collocation protocol as provided in Section 18.450.060; and
  - ii. A registered radio engineer certifies that a more distant location is not technically feasible or sites at a more appropriate location are not available; or
  - iii. A location closer than the required separation will reduce visual or other impacts on surrounding uses better than sites beyond the required separation.
- 8. Adjustments to Chapter 18.910, Improvement Standards shall be processed through a Type II procedure, as provided in Section 18.710.060. The approval authority shall approve or approve with conditions an adjustment to the improvement standards, based on findings that the following is met: Strict application of the standards will result in an unacceptably adverse impact on existing development, on the proposed development, or on natural features such as wetlands, bodies of water, significant habitat areas, steep slopes, or existing mature trees. In approving an adjustment to the standards, the approval authority shall determine that the potential adverse impacts exceed the public benefits of strict application of the standards.
- 9. Adjustments to downtown connectivity standards in Section 18.650.060 shall be processed through a Type II procedure, as provided in Section 18.710.060. This adjustment applies to the location of required connections; adjustments to the design of the required improvement are subject to 18.790.030.B.8. The approval authority shall approve or approve with conditions an adjustment to the connectivity standards when all of the following are met:
  - a. Granting the adjustment will equally or better meet downtown design principles outlined in the transportation system plan;
  - b. Application of the downtown connectivity standards would preclude all reasonable economic use of the site;
  - c. Any adjustment of the street and pedestrian connectivity improvement designations will, at a minimum, preserve the potential for future connectivity improvements; and
  - d. Granting the adjustment would not result in an adverse impact on natural features such as wetlands, bodies of water, significant habitat areas, steep slopes, or existing mature trees. (Ord. 17-22 §2) ■